

EXHIBIT

5

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE

-----:
ULTIMA SERVICES CORPORATION, :
:
Plaintiff, :
:
vs. : Case No.:
: 2:20-cv-00041-
U.S. DEPARTMENT OF AGRICULTURE, : DCLC-CRW
et al., :
:
Defendants. :
-----:

REMOTE DEPOSITION OF DANIEL CHOW

Veritext Legal Solutions
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Washington, D.C. 20005

A P P E A R A N C E S			Page 2	Page 4
1	On behalf of Plaintiff:			
2	MICHAEL E. ROSMAN, ESQUIRE		1	P R O C E E D I N G S
3	MICHELLE A. SCOTT, ESQUIRE		2	WHEREUPON,
4	Center for Individual Rights		3	DANIEL CHOW
5	1100 Connecticut Avenue, Northwest		4	called as a witness, and having been sworn by the
6	Suite 625		5	notary public, was examined and testified as
7	Washington, D.C. 20036		6	follows:
8	(202) 833-8400		7	EXAMINATION BY COUNSEL FOR PLAINTIFF
9	rosman@cir-usa.gov		8	BY MR. ROSMAN:
10	On behalf of Defendants:		9	Q Good morning, Mr. Chow. My name is
11	CHRISTINE DINAN, ESQUIRE		10	Michael Rosman. I represent the plaintiff in the
12	JULIET GRAY, ESQUIRE		11	lawsuit which you're about to give a deposition.
13	ANDREW BRANIFF, ESQUIRE		12	Have you ever been deposed before?
14	Department of Justice		13	A None before this one.
15	Civil Rights Division		14	Q Okay. Why don't you just state your
16	Employment Litigation Section		15	name and address for the record, please.
17	150 M Street, Northeast		16	A My name is Daniel Chow, C-H-O-W. My
18	Washington, D.C. 20530		17	address is 11910 Kings Bridge Way, Rockville,
19	christine.dinan@usdoj.gov		18	Maryland 20852.
20	juliet.gray@usdoj.gov		19	Q Great. Thank you.
21	andrew.braniff@usdoj.gov		20	So let me just explain. This is a
22	ALSO PRESENT:		21	proceeding before trial in a lawsuit. You've been
	Josephine Arnold, Esquire, MBDA		22	sworn to tell the truth. I'm going to ask a
1	C O N T E N T S		Page 3	Page 5
2	EXAMINATION BY:	PAGE		
3	Counsel for Plaintiff	4, 113	1	series of questions which you should answer to the
4	Counsel for Defendant	109	2	best of your knowledge and ability. If you don't
5			3	understand a question, if I've said something
6			4	confusing, you can ask for some clarification and
7	CHOW DEPOSITION EXHIBITS: *	PAGE	5	I might rephrase it. If you need a break at some
8	Exhibit 1 Curriculum Vitae	5	6	point, you can ask me for that and we'll try to
9	Exhibit 2 Executive Order 12432	15	7	arrange one as quickly as we can.
10	Exhibit 3 Update to the Assessment of Contracting		8	Do you have any questions about that?
11	Outcomes for Small Disadvantaged		9	A None. Thank you.
12	Businesses, 2/7/22	33	10	(Chow Exhibit Number 1 was
13			11	marked for identification.)
14			12	BY MR. ROSMAN:
15			13	Q Okay. I've marked as Plaintiff's
16			14	Exhibit 1 your CV or what was given to us as your
17			15	CV.
18			16	Could you just confirm that that is in
19			17	fact your CV?
20			18	A Yes, this is my CV.
21			19	Q Okay. I just have a few questions about
22	(* Exhibits attached to transcript.)		20	it. I noticed in the first position at the U.S.
			21	Bureau of Labor Statistics it says that you
			22	authored professional journal articles and I was

<p style="text-align: right;">Page 110</p> <p>1 what extent our minority- and small-disadvantaged 2 firms are able to win or not win contracts.</p> <p>3 Q And what did you find?</p> <p>4 A We found that -- I found that SDBs that 5 are not in the 8(a) program are 30- -- about 37 6 percent less likely to win a contract compared to 7 firms in the 8(a) program, which are like twice as 8 likely to win a contract, and that there are other 9 characteristics of firms that seem to indicate 10 that there are differences in odds ratio for 11 winning contracts.</p> <p>12 Q In your study you control for a number 13 of factors in your regression analysis to 14 determine whether any of those factors could 15 impact the odds of a firm winning a contract.</p> <p>16 Did you control for every factor that 17 the data allowed you to control for?</p> <p>18 A I controlled for as many factors as I 19 could within the design of the -- of the -- of the 20 study, yes.</p> <p>21 Q In your opinion, would the results from 22 your study be consistent with the presence of</p>	<p style="text-align: right;">Page 112</p> <p>1 of these firms, so yes, they -- they are included 2 in the study.</p> <p>3 Q To your knowledge, were any individual 4 firms removed from the datasets that you were 5 given by SBA either by you or by SBA because of 6 their success in bidding in the federal 7 marketplace?</p> <p>8 A No.</p> <p>9 Q Are you aware of any economic study or 10 data that would indicate that registered 11 minority-owned firms bid less often on contracts 12 than registered non-minority firms --</p> <p>13 A I'm not aware of any.</p> <p>14 Q -- non-minority-owned firms?</p> <p>15 A I'm not aware of any.</p> <p>16 Q Let me look at my notes. Just a moment.</p> <p>17 Just back to what you were saying a 18 moment ago about the findings, when you indicated 19 that certain firms -- there were 37 percent less 20 likely -- had 37 percent less likely odds of 21 winning a contract as compared to other firms, 22 that was all firms with similar characteristics,</p>
<p style="text-align: right;">Page 111</p> <p>1 discrimination?</p> <p>2 A Yes, in my expert opinion it is 3 consistent, yes.</p> <p>4 Q And why is that?</p> <p>5 A Well, again, we're looking at minority 6 firms and I looked at all of the variables that 7 are relevant in terms of, you know, determining 8 the differential impact on the odds of winning. 9 We're looking at minority firms and I can't 10 think of -- I can't think of any nondiscriminatory 11 factors. And we know that discrimination exists 12 in various workplaces and marketplaces, so looking 13 at the fact that if an SDB is not in the 8(a) 14 program versus a firm that is in the 8(a) program, 15 we see a statistically significant difference 16 between those two. So I -- I tend to look at that 17 as being consistent with some form of 18 discrimination.</p> <p>19 Q And that was after controlling for 20 certain nondiscriminatory factors like age and 21 gross receipts and things like that, correct?</p> <p>22 A Correct, those -- those factors are part</p>	<p style="text-align: right;">Page 113</p> <p>1 correct?</p> <p>2 A Correct.</p> <p>3 Q And that was not just in comparison to 4 firms in the 8(a) program; is that right?</p> <p>5 A Correct.</p> <p>6 MS. DINAN: I believe that is all that I 7 have. Let me just double check.</p> <p>8 No, I have no further questions thank 9 you.</p> <p>10 MR. ROSMAN: Just two quick follow-up 11 questions.</p> <p>12 FURTHER EXAMINATION BY COUNSEL FOR 13 PLAINTIFF</p> <p>14 BY MR. ROSMAN:</p> <p>15 Q You testified a moment ago that you 16 thought the results were consistent with 17 discrimination.</p> <p>18 Does this mean that discrimination 19 cannot be eliminated as a possible cause for the 20 discrepancies that you found?</p> <p>21 A I would -- cannot be eliminated as -- I 22 would say so, yes.</p>

29 (Pages 110 - 113)